

Applic. No. : 09/450,399

Remarks:

Reconsideration of the application is requested.

Claims 1-24 remain in the application. Claims 1 and 7 have been amended. Claims 12-24 have been withdrawn from consideration.

In item 2 on page 2 of the above-identified Office action, claim 7 has been rejected as being indefinite under 35 U.S.C. § 112, second paragraph. More specifically, the Examiner has stated that the term "short" is a relative term, and therefore, indefinite.

According to MPEP §2173.05, a relative term does not automatically renders a claim indefinite. It is believed that the key language in §2173.05 regarding relative terminology is that "[a]cceptability of the claim language depends on whether one of ordinary skill in the art would **understand what is claimed**, in light of the specification." Every ellipse has two "long" sides and two "short" sides. The term "short side" of an ellipse is, therefore, believed not to render the claim indefinite. Claim 7 has been slightly re-written.

It is accordingly believed that the claims meet the requirements of 35 U.S.C. § 112, first and second paragraphs.

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Should the Examiner find any further objectionable items, Counsel would appreciate a telephone call during which the matter may be resolved. The above-noted changes to claim 7 are provided solely for the purpose of satisfying formal requirements, clarification, or are made solely for cosmetic reasons to clarify the claim. The changes are neither provided for overcoming the prior art nor do they narrow the scope of the claim(s) for any reason related to the statutory requirements for a patent.

In item 5 on page 2 of the Office action, claims 1-4, 6, and 9-11 have been rejected as being obvious over *Garcea* (US 4,086,063) in view of *Bestenreiner* (WO 94/18441) and *Wieres* (EP 0 470 113) under 35 U.S.C. § 103.

In item 6 on page 5 of the Office action, claims 5 and 7-8 have been rejected as being obvious over *Garcea* in view of *Bestenreiner* and *Wieres*, and further in view of *Bailey et al.* (US 4,050,903) under 35 U.S.C. § 103.

The rejection has been considered and claim 1 has been amended in an effort to even more clearly define the invention of the instant application. Support for the changes is found, for example, in Figs. 1 and 2 of the drawings.

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Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claim 1 as amended calls for, inter alia:

An assembly for cleaning exhaust gas, comprising:

a metallic catalyst carrier body **without a tubular jacket** for installation in an exhaust pipe casing ...; and

a substantially plate-shaped retaining element to be fastened in said exhaust pipe casing, said retaining element extending in a plane, said plane including an angle with said longitudinal axis of said catalyst carrier body, said retaining element having an opening formed therein for receiving said catalyst carrier body and **a protrusion formed at said opening securing said catalyst carrier body in said opening**, said protrusion surrounding only a part of said outer surface of said catalyst carrier body, said retaining element fastened directly on said catalyst carrier body, and said retaining element at least one of holding said catalyst carrier body together in a dimensionally stable state and substantially supporting said catalyst carrier body on its own.

On page 3 of the Office action, the Examiner stated:

Garcea discloses an assembly for cleaning exhaust gas comprising:

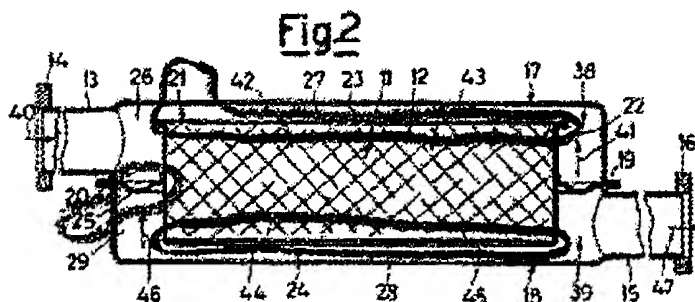
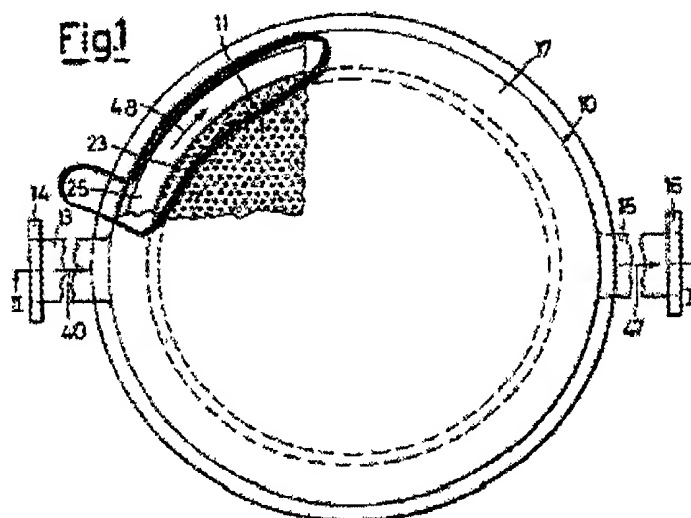
A catalyst carrier body 11 for installation in an exhaust pipe casing 17, 18; said carrier body 11 having a longitudinal axis, an interior with a plurality of flow paths and an outer surface; and

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at least one substantially plate-shaped retaining element 25, 34 to be fastened in said casing 17, 18, said retaining element having an opening formed therein for receiving and securing said carrier body 11, **said retaining element having a protrusion surrounding only part of the outer surface of the carrier body 11** (Figs. 2-3), said retaining element fastened directly on said carrier body 11, and said retaining element at least one holding said carrier body together in a dimensionally stable state and substantially supporting said catalyst carrier body 11 on its own.

(Emphasis added)

The muffler of Garcea is reproduced below:



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Clearly, *Garcea* does not show a protrusion formed at an opening for securing a catalyst carrier body in the opening, as recited in claim 1 of the instant application.

The inventive concept of the invention of the instant application is to use a retaining element with an opening for receiving a catalyst carrier body, and to provide a protrusion formed in the retaining element at the opening for securing the catalyst carrier body in the opening. *Garcea* neither suggests nor contains the relevant teaching which would suggest such a protrusion. Therefore, the invention as recited in claim 1 of the instant application is believed not to be obvious over *Garcea* in view of *Bestenreiner* and *Wieres*.

Furthermore, none of the applied references disclose or suggest a metallic catalyst carrier body *without* a tubular jacket. For example, the applied primary reference *Garcea* discloses a "container 21" for containing the catalyst carrier body.

It is accordingly believed to be clear that *Garcea* in view of *Bestenreiner* and *Wieres* do not suggest the features of claim 1. Claim 1 is, therefore, believed to be patentable over the art and because claims 2-11 are ultimately dependent on claim 1, they are believed to be patentable as well.

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Considering the deficiencies of the primary reference Garcea, it is believed not to be necessary at this stage to address the secondary reference Bailey et al. applied in the rejection of dependent claims 5 and 7-8, and whether or not there is sufficient suggestion or motivation with a reasonable expectation of success for modifying or combining the references as required by MPEP § 2143.

In view of the foregoing, reconsideration and allowance of claims 1-11 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, the Examiner is respectfully requested to telephone Counsel so that, if possible, patentable language can be worked out. In the alternative, the entry of the amendment is requested as it is believed to place the application in better condition for appeal, without requiring extension of the field of search.

If an extension of time is required, petition for extension is herewith made.

Please charge any fees which might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

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Respectfully submitted,



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